

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

STEPHANIE MATTHIESEN,

Plaintiff,

v.

AUTOZONE STORES, INC., a
Nevada Corporation,

Defendant.

NO: 2:15-CV-0080-TOR

ORDER DENYING PLAINTIFF'S
MOTION TO REMAND

BEFORE THE COURT is Plaintiff's Motion for Remand (ECF No. 4). This matter was submitted for consideration without oral argument. The Court has reviewed the parties' briefing and the record and files herein, and is fully informed.

BACKGROUND

On February 11, 2015, Plaintiff Stephanie Matthiesen, a Washington resident, filed and served her Complaint in Chelan County Superior Court against

1 Defendant Autozone Stores, Inc.,¹ a Nevada corporation with its principal place of
2 business in Tennessee. ECF No. 1-4 at 9-14. Plaintiff's Complaint alleges several
3 state law claims, including gender discrimination under the Washington Law
4 Against Discrimination ("WLAD") and emotional distress. *Id.* Defendant
5 received a Summons and a copy of the complaint on March 6, 2015. ECF No. 1-4
6 at 16. On March 30, 2015, Defendant timely removed the case to this Court
7 pursuant to 28 U.S.C. § 1332, which grants the district court original jurisdiction
8 over matters between diverse citizens. ECF No. 1.

9 Plaintiff now moves to remand this case, agreeing to cap her claimed
10 damages and attorney fees at \$75,000 in order to defeat this Court's jurisdiction.
11 ECF No. 4. Plaintiff's Complaint does not specify a particular amount of damages;
12 rather, it demands only general relief for past and future lost wages and benefits,
13 past and future special and general damages, and reasonable attorney's fees and
14 costs. ECF No. 1-4 at 13. Defendant's Notice of Removal asserts that the amount
15 in controversy, considering potential damages and attorney's fees, is well in excess
16 of the jurisdictional requirement. ECF No. 1-4 at 13.

17 DISCUSSION

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19 ¹ Defendant has explained that AutoZone Stores, Inc. is now known as "AutoZone
20 Stores, LLC." ECF No. 2 at 1.

1 A defendant may remove a case to federal court if the federal court would
2 have subject-matter jurisdiction over one or more of the plaintiff's claims pursuant
3 to 28 U.S.C. §§ 1331 (federal question) or 1332 (diversity of citizenship). *See* 28
4 U.S.C. § 1441(a), (b). Under diversity jurisdiction, federal district courts have
5 "original jurisdiction of all civil actions where the matter in controversy exceeds
6 the sum or value of \$75,000, exclusive of interest and costs," and is between
7 diverse citizens. 28 U.S.C. § 1332(a).

8 Where the complaint is silent as to the amount demanded, the burden is on
9 the defendant to prove by a preponderance of the evidence that the amount in
10 controversy exceeds \$75,000. *Kroske v. U.S. Bank Corp.*, 432 F.3d 976, 980 (9th
11 Cir. 2005) (quoting *Singer v. State Farm Mut. Auto Ins. Co.*, 116 F.3d 373, 376
12 (9th Cir. 1997)). The amount in controversy includes the amount of damages in
13 dispute, as well as reasonable attorney's fees, if mandated or allowed by statute or
14 contract. *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1156 (9th Cir. 1998) ("We
15 hold that where an underlying statute authorizes an award of attorneys' fees, either
16 with mandatory or discretionary language, such fees may be included in the
17 amount in controversy."); *see also Guglielmino v. McKee Foods Corp.*, 506 F.3d
18 696, 700 (9th Cir. 2007) ("Section 1332(a)'s amount in controversy requirement
19 excludes only 'interest and costs' and therefore includes attorneys' fees."). In
20 determining the amount in controversy, the court may consider whether it is

1 “facially apparent” from the complaint that the demand exceeds \$75,000. *Abrego*
2 *Abrego v. Dow Chem. Co.*, 443 F.3d 676, 690 (9th Cir. 2006) (quoting *Singer*, 116
3 F.3d at 377). “If not, the court may consider facts in the removal petition, and may
4 ‘require parties to submit summary-judgment-type evidence relevant to the amount
5 in controversy at the time of removal.” *Id.* (quoting *Singer*, 116 F.3d at 377).

6 “[E]vents occurring subsequent to removal which reduce the amount
7 recoverable, whether beyond the plaintiff’s control or the result of his volition, do
8 not oust the district court’s jurisdiction once it has attached.” *St. Paul Mercury*
9 *Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 293 (1938). Rather, a district court’s
10 removal jurisdiction is determined at the time of removal or commencement of the
11 suit in federal court. *Freeport-McMoRan, Inc. v. K N. Energy, Inc.*, 498 U.S. 426,
12 428 (1991) (“We have consistently held that if jurisdiction exists at the time an
13 action is commenced, such jurisdiction may not be divested by subsequent
14 events.”); *Poore v. Am.-Amicable Life Ins. Co.*, 218 F.3d 1287, 1290-91 (11th Cir.
15 2000) (“[E]vents occurring after removal which may reduce the damages
16 recoverable below the amount in controversy requirement do not oust the district
17 court’s jurisdiction.”), *overruled in part on other grounds as recognized by Alvarez*
18 *v. Uniroyal Tire Co.*, 508 F.3d 639, 641 (11th Cir. 2007); *Hill v. Blind Indus. &*
19 *Servs. of Md.*, 179 F.3d 754, 757 (9th Cir. 1999) (“[D]iversity jurisdiction is
20 determined at the time the action commences, and a federal court is not divested of

1 jurisdiction if a party subsequently moves to another state, or if the amount in
2 controversy subsequently drops below the minimum jurisdictional level.” (citations
3 omitted)). If a plaintiff wishes to stipulate to an amount below the jurisdictional
4 minimum, she must do so before the case is removed. *St. Paul Mercury*, 303 U.S.
5 at 292 (“And though, as here, the plaintiff after removal, by stipulation, by
6 affidavit or by amendment of his pleadings, reduces the claim below the requisite
7 amount, this does not deprive the district court of jurisdiction.”); *Walton v. Bayer*
8 *Corp.*, 643 F.3d 994, 998 (7th Cir. 2011) (“A plaintiff can defeat removal of a
9 diversity case by irrevocably committing (before the case is removed) to accepting
10 no more than \$75,000 in damages, *Back Doctors Ltd. v. Metropolitan Property &*
11 *Casualty Ins. Co.*, 637 F.3d 827, 830–31 (7th Cir. 2011), no matter how great her
12 actual damages.”).

13 Although the Supreme Court, in *Standard Fire Ins. Co. v. Knowles*, 133
14 S.Ct. 1345, 1350 (2013), appears to acknowledge, in dicta, that a plaintiff may
15 obtain remand by stipulating to amounts that fall below the federal jurisdictional
16 requirement, its assertion is not supported by the citations provided. First,
17 although the *Knowles* Court quotes an excerpt from *St. Paul Mercury* to support its
18 assertion, the full citation in *St. Paul Mercury* is as follows:

19 We think this well established rule is supported by ample reason. If
20 the plaintiff could, no matter how bona fide his original claim in the
state court, reduce the amount of his demand to defeat federal
jurisdiction the defendant's supposed statutory right of removal would

1 be subject to the plaintiff's caprice. The claim, whether well or ill
2 founded in fact, fixes the right of the defendant to remove, and the
3 plaintiff ought not to be able to defeat that right and bring the cause
4 back to the state court at his election. If he does not desire to try his
case in the federal court he may resort to the expedient of suing for
less than the jurisdictional amount, and though he would be justly
entitled to more, the defendant cannot remove.

5 *St. Paul Mercury*, 303 U.S. at 294. Second, although the *Knowles* Court cites to
6 the Wright, Miller, & Cooper Federal Practice and Procedure treatise for the
7 assertion that a federal court can insist on a “binding affidavit or stipulation that
8 the plaintiff will continue to claim less than the jurisdictional amount,” the
9 citations immediately following this statement affirmatively state that such a
10 stipulation must precede removal. *See* 14AA Charles Alan Wright et al., Federal
11 Practice and Procedure § 3702.1 (citing *Walton*, 643 F.3d at 998; *Back Doctors*
12 *Ltd.*, 637 F.3d at 831). The treatise subsequently cites this same authority when
13 acknowledging that “[s]ome courts have required that these affidavits or
14 stipulations be executed *prior to the notice of removal* as a sign of their bona fides
15 and cannot await the motion to remand.” *Id.* Accordingly, this Court follows the
16 well established practice, as announced in the Supreme Court’s opinion in *St. Paul*
17 and followed by this Circuit.

18 Here, the Defendant has satisfied, by a preponderance of the evidence, that
19 the amount in controversy satisfies the jurisdictional requirement for purposes of
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1 removal.² When Plaintiff was constructively discharged in June 2014, she earned
2 an hourly rate of \$12.50 and was a full-time employee, *see* ECF No. 1-3 at 2
3 (Declaration of Patrick Johnson, State Income Tax Manager for Defendant); thus,
4 Plaintiff's annual salary was approximately \$26,000. ECF No. 1 at 5. Assuming a
5 trial date no earlier than June 2016, Plaintiff could potentially receive a back-pay
6 claim of approximately \$52,000 and a front-pay claim of approximately \$26,000
7 per year. ECF No. 1 at 5. Adding these awards to potential emotional distress
8 damages and reasonable attorney fees which a prevailing party is entitled under
9 WLAD,³ it is more likely than not that the amount in controversy exceeds \$75,000.
10 Plaintiff's post-hoc attempt to cap her damages at \$75,000 does not divest the
11 Court of its diversity jurisdiction, which attached at the time of removal; rather,

12

13 ² Diverse citizenship is not at issue here. Plaintiff is a citizen of Washington;
14 Defendant is organized under the laws of Nevada and maintains its principle place
15 of business in Tennessee. ECF No. 1 at 2-3.

16 ³ Pursuant to WLAD's fee-shifting provision,

17 [a]ny person deeming . . . herself injured by any act in violation of this
18 chapter *shall* have a civil action in a court of competent jurisdiction to
19 enjoin further violations, or to recover the actual damages sustained
by the person, or both, together with the cost of suit including
reasonable attorneys' fees or any other appropriate remedy.

20 RCW 49.60.030(2) (emphasis added).

1 any attempt to stipulate to less than the jurisdictional amount must have preceded
2 removal. Accordingly, Plaintiff's Motion (ECF No. 4) is **DENIED**.

3 **IT IS ORDERED:**

4 Plaintiff's Motion for Remand (ECF No. 4) is **DENIED**.

5 The District Court Executive is directed to enter this Order and provide
6 copies to counsel.

7 **DATED** May 29, 2015.



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A handwritten signature in blue ink, reading "Thomas O. Rice", is written over a light blue circular stamp.

THOMAS O. RICE
United States District Judge